IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1567 OF 1996.

Union of India : Appellants.

versus

M/s.Himatlal Hirji & Co. : Respondent.

Mr.A.N.Samant for the appellants.

None for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 2nd May 2005.

ORAL ORDER

1. Heard Mr.Samant for the Union of India. Nobody is present for the respondent, though served. This appeal is filed by the Union of India against the order of the Railway Claims Tribunal, Mumbai directing the appellants to pay to the respondent Rs.11,644/- with costs and interest at the rate of 12% p.a.

2. Mr.Samant made three submissions viz. that the RR was with endorsement "said to

contain" and the respondent has not discharged their burden by proving as to how much quantity of rice or bags of toor dal were entrusted to the railway for transport. Secondly, he contended that the appellant has raised defence of accord and satisfaction and nothing remained to be paid. Thirdly, he contended that the interest awarded by the tribunal at 12% per annum was exorbitant in the present scenario.

3. It was the case of the respondent that they had despatched 250 kattas of toor dall under RR No.713505 dated 28.05.92 at railway risk rate ex-Kanpur CPC to Bombay. The consignment was damaged. Claim was lodged for damages. The damage was assessed by the surveyors of the railway. Certificate was issued. At the time of delivery 209 kattas were found damaged by rain water, 4 kattas were delivered in torn and slack condition and 16 kattas were delivered short. The damage was to the extent of 10% to 50%. And therefore in this background the claim petition came to be filed before the tribunal.

4. As per the railway receipt the railway have charged freight charges for the quantity and

quality described in the railway receipt. The claim for damages is not in respect of all the bags mentioned in railway receipt. The damages claimed are in respect of loss of or damages to the part of the goods. And considering the charges levelled it has to be held that the railway has received at least that number of bags which were ultimately found to be damaged. Therefore, even if there is no evidence as to the actual number of bags loaded in wagons and even if the railway receipt mentioned said to contain, the railway cannot be permitted to contend that they did not receive even those number of bags for which the claim is lodged. If they are permitted to raise such plea then it would mean that the railway has issued receipts without receiving any number of bags from the applicant. There is no dispute that the bags were damaged due to rain water. Toor dal bags were entrusted to the railway and at the time of delivery they were found to be useless because of the rain water. No other inference about negligence of the railway can be drawn. It was contended by Mr.Samant on the basis of their reply before the tribunal that the bags were not properly kept and the distance was not maintained. I do not find

any substance in his submission. Because nature of damages is due to rain water. It is clear that water has percolated in the wagons which also means that the wagons used for transporting the toor dal from one place to another were not water proof and no quality was provided for stopping the leakage of rain water. This is, therefore, clear case of negligence of railway. In view of this the appeal is required to be allowed.

5. Secondly, it was urged by Mr.Samant that the appellant had sent a cheque of Rs.25960/- and adjustment was given by the claimant. Even this cannot be accepted as a defence that by the payment of the aforesaid amount, the appellants are absolved of their liability.

6. The next contention of Mr.Samant was that the interest that was awarded by the tribunal at 12% was not proper in view of the judgment of this Court reported in **2005 (1) Mh.L.J.165 Maharashtra State Electricity Board vs. Union of India.** It was a claim against the railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed the

same judgment earlier. Therefore, in view of this judgment the rate of interested is reduced to 9%.

:ORDER:

The appeals are partly allowed.

The rate of interest is reduced to 9% p.a.

No order as to costs.

[D.G.DESHPANDE]

02/05/2005 JUDGE.